FEB 4 1975
MICHAEL RODAK, JR., CLERK

Supreme Court of the United States

October Term, 1974

No. 74-685

WALTER C. ROBSON, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

Petition For A Writ of Certiorari
To The United States Court of Appeals
For The Ninth Circuit

Petitioner's Reply To The Memorandum For The United States in Opposition

CLYDE R. MAXWELL
Attorney at Law
Suite 204
567 San Nicolas Drive
Newport Beach, California 92660
(714) 644-5232

J. GALLAGHER — PRINTED BRIEFS (714) 547-6073

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1974

—

No. 74-685

WALTER C. ROBSON, Petitioner

v.

UNITED STATES OF AMERICA

—

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

—

PETITIONER'S REPLY TO THE MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner requests this Honorable Court to consider the following matters with respect to the Memorandum of the United States in Opposition to Petitioner's Petition for Writ of Certiorari.

It is apparent from the Memorandum that the United States does not deny that prior to indictment "leads" to petitioner's cash on hand by way of the informal statement of three witnesses were presented to the United States and that these statements qualify as "leads" under the doctrine of **Ho and v. United States** 348 U.S. 121. The Memorandum for the United States in Opposition (page 3) goes on to state that the information submitted by the petitioner **"was not given credence by the government,"** and that therefore the prosecution was under no duty to call them as witnesses in its part of the case.

In so stating the United States concedes that it has undertaken a judicial function; that is, the determination as to the credence of the "leads" submitted, instead of submitting these leads to the court so that they might be considered by the Court on a motion at the end of the government's case for acquittal, so that the trial court could consider whether the government's evidence did rebut this strong credible evidence of a cash accumulation.

The government in its memorandum also points out that these witnesses testified for the defense but fails to note that the trial court in his decision given at the end of all the testimony did indeed believe the witnesses and stated that, based on their testimony, a cash hoard existed. It may be fairly assumed from this that, if these witnesses had testified in the government's case, the court would have held that the defendant be not guilty on such a motion especially in view of the fact that the government's evidence did not contain any specific item of unreported income from petitioner's business. (Transcript, pages 2219 and 2122).

It is respectfully submitted that accordingly judgment as to the credence of the leads furnished by the defendant was not a matter for government prosecutors, but a matter for the court to decide, and the only way to get these things before the court for its consideration on a motion at the end of the government's case was for the government to present the witnesses. In so doing, the government need not have vouched for their testimony; but nevertheless the court should have heard as their testimony as "leads" gives under the doctrine of **Holland vs. United States,** 348 U.S. 121, in order to determine the adequacy of the prosecution case.

It is exactly this point which the government misconstrues at the bottom of page 3 of its Memorandum when it states that the petitioner received whatever benefit the testimony of these witnesses provided by calling them as witnesses for the defense. After the government's case was concluded the defendant did **not** receive the benefit of having the Court consider the testimony of these witnesses on the motion to acquit at the end of the government's case, thereby denying to the defendant due process of law as clearly expounded in the Holland case, **supra,** all as contended in the Petition for Certiorari.

CLYDE R. MAXWELL
Attorney at Law

January 31, 1975.

PROOF OF SERVICE

State of California)
ss
County of Riverside)

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of 18 years and not a party to the within entitled action; my business address is 1509 N. Main, Santa Ana, California.

I served the within
PETITIONER'S REPLY TO THE MEMORANDUM FOR THE UNITED STATES IN OPPOSITION
on the

interested parties in said action, by placing three (3) true copies in three sealed envelopes with postage thereon fully prepaid, in the United States mail at Santa Ana, California, addressed to:

Mr. William B. Saxbe
Attorney General
Attn: Appellate Section
Tax Division
Room 4320
Washington, D.C. 20530

William D. Keller
United States Attorney
U. S. Court House
312 N. Spring Street
Los Angeles, Calif. 90012

Robert H. Bork, Solicitor General
Department of Justice
Washington, D. C. 20530

I CERTIFY under penalty of perjury that the foregoing is true and correct. Executed on
at Santa Ana, California.